

Hicks pleads not guilty at Guantanamo Bay “kangaroo court”

Richard Phillips
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Twenty-nine-year-old Australian David Hicks, one of four prisoners brought before a US military tribunal in Guantanamo Bay last week, has pleaded not guilty to charges that he conspired to commit war crimes, aided the enemy and attempted to murder US and coalition forces in Afghanistan.

Hicks was captured by the Northern Alliance in Afghanistan in late 2001 and handed over to the US military, which transported him to Guantanamo Bay in January 2002, where he has been held in violation of the Geneva Conventions and his basic legal rights for more than two and a half years. His courageous “not guilty” plea comes after constant US military interrogations and physical and psychological torture to force him to admit to various crimes. If convicted, he could face life imprisonment.

The three other prisoners brought before the tribunal last week—Salim Ahmed Hamdan, 34, Ali Hamza Ahmad Sulayman al-Bahlul, 33, and Ibrahim Ahmed Mahmoud al-Qosi, 44—are accused of being Al Qaeda members and various conspiracy charges. Hamdan and al-Bahlul are from Yemen; and al-Qosi is Sudanese. The trials are a legal travesty and have been denounced by human rights organisations around the world as “kangaroo courts”. The American treatment of the almost 600 war prisoners held in Guantanamo Bay is a war crime.

Hicks’s lawyers, Joshua Dratel and Marine Major Michael Mori, said the military trials were incapable of providing Hicks and other prisoners a fair trial and called for the charges against the Australian to be dismissed on 19 separate grounds.

They argued that President Bush had no constitutional authority to order the military tribunal; the US lacked jurisdiction over events alleged to have been committed by a non-US citizen in Afghanistan before the conflict started; and that the charges were not classified as crimes in any pre-existing US, international or military code of law. They also said that four of the five-member tribunal had friendships or jobs that compromised their ability to be impartial.

Mori later told the media that the tribunals were “shameful” and had been established to guarantee convictions, a process that was “not tolerated anywhere else in the world”. Hicks’s lawyers plan to lodge a habeas corpus writ this week in an attempt to secure a US civil court hearing.

Dratel repeatedly questioned military commission head Army Colonel Peter E. Brownback on his relationship with retired Major General John D. Altenburg, who selected him to lead the military tribunal. Brownback is close friends with the Altenburg

family—attended his son’s wedding and spoke at Altenburg’s retirement party. Brownback’s wife had been employed in Altenburg’s office.

Other tribunal members, none of whom have any legal training or experience, include: Colonel Thomas Bright, who was involved in the transfer of prisoners from Afghanistan to Guantanamo Bay, and Colonel Timothy Tommey, a military intelligence officer, who was officially praised for “fantastic results for tracking and killing Taliban” in Afghanistan at the time when Hicks was captured. A third member attended the funeral of one of his soldiers who was killed at the World Trade Center and an alternate commissioner admitted to the hearing that he had “very strong emotions” about the September 11 terrorist attacks.

Under trial rules only three out of the five members of the tribunal are needed to make a guilty verdict. Hearsay and “evidence” extracted under torture are admissible, and, in contrast to US military courts martial, there is no civil court appeal. In other words, the Pentagon is the captor, jailer, judge, jury and prosecutor. And, even if the accused are found not guilty, they can still be held for the rest of their lives if Washington deems them to be dangerous.

A further demonstration of the reactionary character of the trials was provided during the arraignment of Salim Ahmed Hamdan, who is accused of being Osama bin Laden’s driver. Hamdan’s lawyer, Lieutenant Commander Charlie Swift, asked Lieutenant Colonel Curt Cooper, a tribunal member alternate, whether he knew what the Geneva Convention was.

“Not specifically, no sir, and that’s being honest,” Cooper replied, but then claimed that he was looking forward to reading the three conventions. There are, in fact, four Geneva Conventions.

Before entering the hearings, Swift told the media: “Never in American history has a president or a Defence Department asserted this raw power and certainly not after the revolution in international law heralded by the 1949 Geneva Conventions which the United States signed and ratified in 1955. The current military commission flatly violates not only the United States constitution but the very laws of war the Administration claims to be upholding.”

Swift later asked Brownback if he believed that Bush administration orders establishing the military commissions were lawful. Brownback refused to reply, declaring: “I choose not to answer that question at this time”.

Although the prosecution had at least two or three attorneys

during last week's hearings, defence lawyers have been denied basic resources. Swift has one military paralegal to help with research, but no assistant defense counsel despite constant requests to the Pentagon. Army Major Mark Bridges, who is defending al-Bahlul, had only one meeting with his client prior to last week's hearing, because the US military refused to supply a translator. Air Force Lieutenant Colonel Sharon Shaffer is the only person on the al-Qosi defense team. Washington has refused her request for an assistant defense counsel and she complained that translation of her client's statements during his hearing last week were either wrong or inadequate.

While the Pentagon has allowed selected journalists to cover the trial, what they can report is heavily restricted. There is no official audio or video recording of the proceedings and the press is banned from publishing any photos or drawings of the defendants, including David Hicks, whose picture is already widely available. US military authorities defended the ban with the ludicrous claim that it was to protect the prisoners' Geneva Convention rights.

Only seven reporters are allowed in the court—the rest have to watch on closed-circuit television. If they leave the court midway, even to go to the toilet, they are not readmitted for the rest of the day. Journalists cannot move anywhere on Guantanamo Bay without a military escort and need clearance for any interviews recorded on the base.

Human rights and legal observers in attendance, including Amnesty International and Human Rights Watch, are even more tightly regulated. They issued a joint statement last week protesting the Pentagon's refusal to grant them access to Guantanamo Bay prison cells, despite media representatives being shown Camp Echo cells, where those on trial or about to be charged are jailed. Prisoners in Camp Echo are in solitary confinement 23 hours a day and under constant video surveillance. Their only human contact is with their interrogators.

David Hicks has been incarcerated in these conditions for the past 10 months. He has complained to his lawyers and Australian authorities about his treatment and told them that American military personnel in Afghanistan subjected him to a series of extreme physical assaults in late 2001. British prisoners released from Guantanamo Bay recently confirmed this illegal treatment, which constitutes a war crime under the Geneva Conventions. They said that Hicks had been hooded and beaten in Afghanistan and that military personnel in Guantanamo Bay had singled him out for especially harsh treatment.

During last week's hearing Hicks was allowed two meetings with his father Terry and stepmother Beverly. He was shackled during the brief and emotional reunion. Apart from a handful of heavily censored letters and two monitored phone calls, this was his first direct contact with his family in five years.

Hicks told his father that he had been physically and psychologically assaulted during his detention and that Guantanamo Bay jailers had censored family letters, blacking out the word "love" in the correspondence. He also told his parents that he was having psychological difficulties coping with the extreme isolation he has endured in Camp Echo.

Terry Hicks later told the international media that "the report from the English [prisoners] is correct" and that his son had been

treated in a "not very pleasant way". "He's been abused ... there's two types: there's physical abuse which he copped before he came here. The mental side is here [at Guantanamo Bay]".

Hicks said that further information about his son's treatment would be released in the near future and blamed Australian Prime Minister Howard and Foreign Minister Downer for the almost three years his son has been incarcerated by the American military.

When told that Australian Foreign Minister Alexander Downer had said that David Hicks could be released if found not guilty, Hicks bluntly replied: "I have no time for him; he seems to forget the damage he's done to David."

The Howard government is the only one in the world that has not requested the release and repatriation of its citizens from Guantanamo Bay. In fact, Hicks is only on trial because senior Australian government leaders, including Prime Minister Howard, have made clear over the past two and a half years that the Bush administration could do whatever it wanted with Hicks and fellow Australian prisoner Mamdouh Habib. Downer and Howard have also violated basic legal rights by publicly denouncing Hicks and Habib as terrorists and guilty of war crimes.

Last week Howard, Downer and Attorney-General Philip Ruddock claimed that the Guantanamo Bay trials were "fair" and "following due process". Downer also released a US Department of Defense letter claiming to have "investigated" complaints by Hicks and Habib that they had been physically assaulted. The letter claimed the allegations were unfounded.

But the bogus character of the so-called "investigation" was revealed on August 25 when Captain Steve Edmondson, the chief medical officer for Guantanamo Bay, told a *Sydney Morning Herald* journalist that US Department of Defense investigators had not interviewed him, or any of his medical staff, over the torture allegations. He also admitted that he had not been asked to provide a mental health assessment of Hicks, or any of others brought before the tribunal, as to their competence to stand trial.



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